

(j) For the purposes of 28 U.S.C. 3201(e), the Secretary hereby waives the restriction on receipt of funds or benefits under this program but only as to beneficiaries who as a condition of such waiver agree to apply the benefits to reduce the amount of the judgement lien.

(k) The provisions of parts 1400, 1403 and 1404 of this chapter apply to NAP.

(l) In the case of death, incompetence or disappearance of any person who is eligible to receive payments under this part, such payments will be disbursed in accordance with part 707 of this title.

### **Subpart B—Determining Yield Coverage Using Actual Production History**

#### **§ 1437.101 Actual production history.**

Actual production history will be used, except as otherwise indicated in this part, as the basis for providing noninsured crop disaster assistance.

#### **§ 1437.102 Yield determinations.**

(a) Payments based on yields shall be made on “approved yields”, which shall be calculated based on the producer’s APH for that period up to ten years for which, of the first time such a yield is calculated, there are consecutive years, beginning with the most recent completed year, of actual production history for the producer. If there are not four such consecutive years of history (excluding years when the crop was out of rotation), then such first “approved yield” shall be constructed by creating a four year history as provided for in this part. After the first such approved yield is constructed, years will be added to that history in the manner provided for in this section, dropping, as needed, previous years from the history to the extent that the current history would be a history or base of ten years. For the first approved yield, as needed to construct a four-year history, history will be supplied using T-yields, as set out in paragraph (b) of this section.

(b) The county expected yield:

(1) Is the “T-yield” for the crop, and is the Olympic average (disregarding the high and low yields) of yields in the county the 5 consecutive crop years

immediately preceding the previous crop year. (Example: For the 2001 crop year, the base period would be 1995 through 1999).

(2) Will be the same as the FCIC transitional yield if crop insurance is available for the crop, (but not necessarily for the cause of loss if excluded by policy provisions), in the administrative county.

(3) Will be calculated so as to be comparable to the FCIC transitional yield most reasonable to the area if crop insurance was available for the crop (but not necessarily for the cause of loss) in contiguous counties, but not in the immediate county.

(c) Available historical information will be used to establish the county expected yields. Historical information is available from sources including, but is not limited to, National Agricultural Statistics Service data, Cooperative State Research, Education, and Extension Service records, Federal Crop Insurance Data, credible non-government studies, yields in similar areas, and reported actual yield data. Such yields will be based on the acreage intended for harvest.

(d) County expected yields may be adjusted for:

(1) Yield variations due to different farming practices in the administrative county such as: irrigated, nonirrigated, and organic practices; and

(2) Cultural practices, including the age of the planting when such practices are different from those used on acreage to establish the yield.

(e) A T-yield will be used in the actual production history database when less than four consecutive crop years of actual, assigned, or zero yields, as applicable, are available. For those producers who have land physically located in multiple counties and administered out of one county office, the T-yield for all land for the producer will be based on the administrative county’s expected yield for that crop. Where a four-year base must be constructed for the producer’s first approved yield because the producer does not have at least four consecutive years of actual history starting with the most recent year, then:

(1) If an approved yield had not previously been calculated for the crop